or which concern, or are annexed to, or may be exercised within, the same, as rents, estovers, commons, and the like. Also offices and dignities which concern lands, or have relation to fixed and certain places, may be entailed; but mere personal chattels, which savor not at all of the realty, cannot be entailed. Neither can an office which merely relates to such personal chattels, nor an annuity, which charges only the person, and not the lands of the grantor be entailed under the statute.

16. *What are the several species of estates tail?*—113.

Estates tail are either general or special.

17. *What is tail-general?*—113.

Tail-general is where lands and tenements are given to one, and the heirs of his body begotten.

18. *What is tail-special?*—113, 114.

Tenancy in tail-special is where the gift is restrained to certain heirs of the donee's body, and does not go to all of them in general.

19. *By what distinction are estates in general, and special tail, further diversified?*—114.

By the distinction of sexes in such entails; for both of them may either be in tail-male, or tail-female.

20. *What word is necessary in order to make a fee-tail?*—114, 115.

The word body, or some other word of procreation, to ascertain to what heirs in particular the fee is limited.

21. *How was the statute* de donis *evaded?*—116.

By the application of common recoveries in the twelfth year of Edward IV., which were then openly declared by the judges to be a sufficient bar of an estate tail.

22. *What is the present state of estates tail?*—119.

They are now reduced again to almost the same state, even before issue born, as conditional fees were in, at common law, after the condition was performed by the birth of issue.

CHAPTER VIII.

OF FREEHOLDS, NOT OF INHERITANCE.

1. *Of what sorts are estates of freehold, not of inheritance, but for life?*—120.

Some are conventional, or expressly created by the acts of the parties; others, merely legal, or created by construction and operation of law.

2. *In what ways may the first be created?*—120.

By deed, or by grant.

3. *Who is a tenant* pur autre vie?—120.

He who holds an estate by the life of another.

4. *Against whom does the law say that all grants are to be taken most strongly?*—121.

Against the grantor, unless in the case of the king.

5. *Are there not some estates for life which may determine upon future contingencies, before the life for which they are created expires?*—121.

Yes; as if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases, whenever the contingency happens, when the widow marries, or when the grantee obtains a benefice, the respective estates are absolutely determined and gone. Yet, while they subsist, they are reckoned estates for life.

6. *Why, in conveyances of estates for life, is the grant usually made for the term of a man's natural life?*—121.

In case an estate be granted to a man for his life, generally, it may also determine by his civil death, as if he enters into a monastery, whereby he is dead in law: for which reason, in such conveyances, the grant is usually made "for the term of a man's natural life," which can only determine by his natural death.

7. *Who is intended by the words* cestuy que vie?—123.

He on whose life lands are held

8. *When is a tenant for life not entitled to emblements?*—123.

When he determines the estate by his own act.

9. *What is an estate tail after possibility of issue extinct?*—124.

This estate happens where one is tenant in special tail, and a person, from whose body the issue was to spring, dies without issue; or, having left issue, that issue becomes extinct.

10. *What is tenancy by the curtesy of England?*—126.

Where a man marries a woman seized of an estate of inheritance, that is, of lands and tenements in fee-simple or fee-tail, and has by her issue, born alive, which was capable of inheriting her estate; in this case, he shall, on the death of his wife, hold the lands for his life, as tenant by the curtesy of England.

11. *What four requisites are necessary to make a tenancy by the curtesy of England?*—127.

Marriage, seizin of the wife, issue, and death of the wife.

12. *When is the husband said to be tenant by the curtesy initiate?*—127.

By the birth of the child the husband becomes tenant by the curtesy initiate: his estate is not consummate until the death of the wife.

13. *What are the four requisites to curtesy?*—127.

They are: 1. The marriage must be canonical and legal. 2. The seizin of the wife must be an actual seizin or possession of the lands. 3. The issue shall be born alive. 4. Death of the wife.

14. *What is tenancy in dower?*—129.

Where the husband of a woman is seized of an estate of inheritance, and dies: in this case, the wife shall have the third part of all the lands and tenements, whereof he was seized at any time during the coverture, to hold to herself for the term of her natural life.

15. *Who may, and may not, be endowed?*—130.

A woman, to be endowed, must be the actual wife of the party at the time of his decease. If she be divorced *a vinculo matrimonii*, she shall not be endowed; for *ubi nullum matrimonium, ibi nulla dos.* But a divorce *a mensa et thoro* only doth not destroy the dower; no, not even for adultery itself, by the common law.

16. *For what is dower granted?*—130.

For the sustenance of the wife, and the nurture and education of the children.

17. *How is dower lost?*—131.

Widows of traitors are barred of their dower, except in the case of certain modern treasons relating to the coin. An alien also cannot be endowed, unless she be queen consort, for no alien is capable of holding lands.

18. *How long must the husband be seized of land, to entitle the widow to dower?*—132.

If the land abide in the husband but for the interval of a single moment, the wife shall be endowed thereof.

19. *What are the four species of dower subsisting?*—132, 133.

1. Dower by the common law, or that before described; 2. Dower by particular custom, as that the wife shall have half the husband's lands, or in some places the whole, and in some only a quarter; 3. Dower *ad ostium ecclesiæ;* 4. Dower *ex assensu patris.*

20. *What is now the only usual species of endowment?*—135.

Dower by the common law.

21. *How may dower be barred or prevented?*—136, 137.

By elopement, divorce, being an alien, the treason of her husband, and other disabilities; by detaining the title deeds, or evidences of the estate, from the heir, until she restores them; by levying a fine, or suffering a recovery of the lands, during coverture; and by jointure.

22. *What is the most usual method?*—137.

By jointure.

23. *How is jointure defined by Sir Edward Coke?*—137.

As "a competent livelihood of freehold for the wife, of lands and tenements; to take effect, in profit or possession, presently after the death of the husband, for the life of the wife at least."

24. *What four requisites must be punctually observed, in order to make a jointure good?*—138.

1st. The jointure must take effect immediately on the death of the husband.

2d. It must be for the wife's own life at least, and not *pur autre vie*, or for any term of years, or other smaller estate.

3d. It must be made to herself, and no other in trust for her.

4th. It must be made, and so in the deed particularly expressed, to be in satisfaction of her whole dower, and not of any particular part of it.

25. *What if the jointure be made to the wife after marriage?*—138.

She has her election, after her husband's death, as in dower *ad ostium ecclesiæ*, and may either accept or refuse it, and betake herself to her dower at common law; for she was not capable of consenting to it during coverture.

26. *What, if by any fraud or accident, a jointure made before marriage proves to be on a bad title, and the jointress is evicted, or turned out of possession?*—138.

The statute has made provision, that, in such cases, she shall have her dower *pro tanto* at the common law.

27. *What are the comparative advantages of dower and jointure?*—138, 139.

Tenant in dower, by the old common law, is subject to no tolls or taxes; and hers is almost the only estate on which, when derived from the king's debtor, the king cannot distrain for his debt, if contracted during coverture. But, on the other hand, a

widow may enter at once, without any formal process, on her jointure land. Though dower be forfeited by the treason of the husband, yet lands settled in jointure remain unimpeached to the widow.

CHAPTER IX.

OF ESTATES LESS THAN FREEHOLD.

1. *Of what sorts are estates less than freehold?*—140

Of three sorts: 1st. Estates for years; 2d. Estates at will; 3d. Estates by sufferance.

2. *What is an estate for years?*—140.

An estate for years is a contract for the possession of lands or tenements for some determinate period.

3. *What is a month in law?*—140.

It is a lunar month, or twenty-eight days, unless otherwise expressed. Therefore a lease for "twelve months" is only for forty-eight weeks; but if it be for "a twelve month," in the singular number, it is good for the whole year.

4. *How many hours does the law reckon in the space of a day?*—141.

All the twenty-four hours are usually reckoned; the law generally rejecting all fractions of a day, in order to avoid disputes.

5. *How might a lessee's estate be defeated?*—142.

By the ancient law, by a common recovery suffered by the tenant of the freehold.

6. *What is an estate for years?*—143.

Every estate which must expire at a period certain and prefixed, by whatever words created.

7. *Can an estate of freehold commence* in futuro?—143, 144.

No; because it cannot be created at common law without livery of seizin.

8. *What estate has a tenant for years?*—144.

He has no estate in, but only a right of entry on, the tenement, which right is called his interest in the term, or *interesse termini;* but when he has actually so entered, and thereby accepted the grant, the estate is then, and not before, vested in him, and he is possessed, not properly of the land, but of the terms of years, the possession or seizin of the land remaining still in him who hath the freehold.

9. *What is the legal difference between the term and the time of a lease for years?*—144.

The word term does not merely signify the time specified in the lease, but the estate also and interest that passes by that lease; and, therefore, the term may expire during the continuance of the time; as by surrender, forfeiture and the like.

10. *What are incident to an estate for years?*—145.

Tenant for term of years hath incident to and inseparable from his estate, unless by special agreement, the same estovers which the tenant for life is entitled to; that is to say, housebote, fire-bote, plow-bote, and hay-bote.

11. *What is an estate at will?*—145.

An estate at will is where lands and tenements are let by one man to another, to have and to hold, at the will of the lessor; and the tenant by force of this lease obtains possession.

12. *In what case is a tenant at will entitled to emblements?*—146.

When he has sown the land, and the landlord, before the corn is ripe, or before it is reaped, puts him out.

13. *What acts amount to a determination of the will?*—146.

Any act of ownership by the lessor, as entering upon the premises and cutting timber, taking a distress for rent, and impounding it thereon, or making a feoffment, or lease for years to commence immediately; any act of desertion by the lessee, as

assigning his estate to another, or committing waste, which is an act inconsistent with such tenure, or, which is *instar omnium*, the death or outlawry of either lessor or lessee; puts an end to, or determines the estate at will.

14. *How have courts of law leaned in construing demises, where no certain term is mentioned?*—147.

They have leaned, as much as possible, against construing demises, where no certain term is mentioned, to be tenancies at will; but have rather held them to be tenancies from year to year so long as both parties please.

15. *What notice is required to determine a tenancy from year to year?*—147.

Reasonable notice, which is generally understood to be six months.

16. *In what species of estates at will is the will qualified by the custom of the manor?*—147, 148.

In copyhold estates, or estates held by copy of court roll. This custom, being suffered to grow up by the lord, is looked upon as the interpreter of his will.

17. *Why were copyholds not freeholds?*—148, 149.

The reason seems to have arisen from the nature of villenage tenure; in which a grant of any estate of freehold, or even for years absolutely, was an immediate enfranchisement of the villein.

18. *What kind of estate have customary freeholders?*—149.

They have a freehold interest, though not of a freehold tenure.

19. *What are the comparative advantages of a copyhold, and of an absolute freehold estate?*—150.

We may now look upon a copyholder of inheritance, with a fine certain, to be little inferior to an absolute freeholder in point of interest, and in other respects, particularly in the clearness and security of his title, to be frequently in a better situation.

20. *What is an estate at sufferance?*—150.

An estate at sufferance is where one comes into possession of land by lawful title, but keeps it afterward without any title at all.

21. *Against whom can no man be tenant at sufferance?*—150.

The King, to whom no *laches*, or neglect, in not entering and ousting the tenant, is ever imputed by law.

22. *How may an estate at sufferance be destroyed?*—150.

The true owner shall first make an actual entry on the land, and oust the tenant; for, before entry, he cannot maintain an action of trespass against the tenant by sufferance; as against a stranger he might.

CHAPTER X.

OF ESTATES UPON CONDITION

1. *What is an estate upon condition?*—152.

An estate upon condition is one whose existence depends upon the happening, or not happening, of some uncertain event, whereby the estate may be either originally created, or enlarged, or finally defeated.

2. *How are estates upon condition divided?*—152.

Into estates upon condition implied, and estates upon condition expressed: under the last division are included estates held *in vadio*, gage, or pledge; estates by statute merchant, or statute staple; and estates held by elegit.

3. *What are estates upon condition implied in law?*—152.

Estates upon condition implied in law are where a grant of an estate has a condition annexed to it inseparable from its essence and constitution, although no condition be expressed in words. As if a grant be made to a man of an office, generally,

without adding other words; the law tacitly annexes thereto a secret condition, that the grantee shall duly execute his office.

4. *How may an office be forfeited?*—153.

By mis-user and non-user, both of which are breaches of the implied condition annexed to the grant of the office.

5. *What is an estate on condition expressed?*—154.

It is an estate granted, either in fee simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, upon performance or breach of such qualification or condition.

6. *What is an estate to a man and his heirs, tenants of a certain manor?*—154.

It is an estate upon condition that he and his heirs continue tenants of that manor.

7. *Of what kinds are conditions expressed?*—154.

Precedent or subsequent.

8. *What is the distinction between a condition in deed, and a limitation, or condition in law?*—155.

When an estate is so expressly confined and limited by the words of its creation, that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail, this is denominated a limitation. But when an estate is, strictly speaking, upon condition in deed, (as if granted expressly *upon condition* to be void upon the payment of forty pounds by the grantor, or so that the grantee continues unmarried, or provided he goes to York,) the law permits it to endure beyond the time when such contingency happens, unless the grantor, or his heirs or assigns, take advantage of the breach of the condition, and make either an entry, or a claim, in order to avoid the estate.

9. *In instances of limitation or condition subsequent, what estate has the grantee so long as the condition remains unbroken?*—156.

The grantee may have an estate of freehold, provided the estate, upon which such condition is annexed, be in itself of a freehold nature. But where the estate is at the utmost a chat-

tel interest, which must determine at a time certain, and may determine sooner (as a grant for ninety-nine years, provided A, B, and C, or the survivor of them, shall so long live), this still continues a mere chattel, and is not, by such its uncertainty, ranked among the estates of freehold.

10. *When are express conditions void?*—156.

If they be impossible at the time of their creation, or afterward become impossible by the act of God, or the act of the feoffer himself; or if they be contrary to law, or repugnant to the nature of the estate, they are void. In any of which cases, if they be conditions subsequent, that is, to be performed after the estate is vested, the estate shall become absolute in the tenant.

11. *Of what kinds are estates held* in vadio?—157.

They are of two kinds, *vivum vadium*, or living pledge; and *mortuum vadium*, dead pledge, or mortgage.

12. *What is* vivum vadium, *or living pledge?*—157.

It is when a man borrows a sum (say £200) of another; and grants him an estate, as of £20 per annum, to hold till the rents and profits shall repay the sum so borrowed. This is an estate conditional, to be void as soon as such sum is raised; and the land or pledge is said to be living, as it subsists and survives the debt, and, immediately on the discharge of that, results back to the borrower.

13. *What is* mortuum vadium, *or mortgage?*—157, 158.

It is where a man borrows of another a specific sum, (e. g. £200,) and grants him an estate in fee, on condition that if he, the mortgagor, shall pay the mortgagee the said sum of £200 on a certain day mentioned in the deed, that then the mortgagor may re-enter on the estate so granted in the pledge; or, as is now the usual way, that then the mortgagee shall re-convey the estate to the mortgagor. In this case, the land which is so put in pledge is, by law, in case of non-payment at the time limited, forever dead and gone from the mortgagor, and the mortgagee's estate in the lands is no longer conditional, but absolute.

14. *Who is called tenant in mortgage?*—158.

Between the time of borrowing the money and the time allotted for payment, the mortgagee is called tenant in mortgage.

15. *Whence is the origin of granting only a long term of years by way of mortgage?*—158.

Principally, because, on the death of the mortgagee, such term becomes vested in his personal representatives, who alone are entitled in equity to receive the money lent, of whatever nature the mortgage may happen to be.

16. *What is equity of redemption?*—159.

It is a reasonable advantage, allowed to mortgagors, by the Courts of Equity, which enables a mortgagor to call on the mortgagee, who has possession of his estate, to deliver it back, and account for the rents and profits received, on payment of his whole debt and interest.

17. *What is foreclosure?*—159.

The mortgagee may either compel the sale of the estate, in order to get the whole of his money immediately; or else call upon the mortgagor to redeem his estate presently, or, in default thereof, to be forever foreclosed from redeeming the same; that is, to lose his equity of redemption without possibility of recall.

18. *What are estates held by statute merchant, and statute staple?*—160.

They are very nearly related to the *vivum vadium*, an estate held till the profits thereof shall discharge a debt liquidated, or ascertained. For both the statute merchant and statute staple are securities for money; the one entered into before the chief magistrate of some trading town, pursuant to the statute 13 of Edward I. *de mercatoribus*, and thence called a statute merchant; the other pursuant to the statute 27 of Edward III., c. 9, before the mayor of the staple, that is to say, the grand mart of the principal commodities, or manufactures of the kingdom, formerly held by act of parliament in certain trading towns, from whence this security is called a statute staple.

19. *What is an Elegit?*—161.

It is another conditional estate, created by operation of law,

for security and satisfaction of debts. Elegit is the name of a writ founded on the statute of Westminster 2d, by which, after a plaintiff has recovered judgment for his debt at law, the sheriff gives him possession of one-half the defendant's lands and tenements, to be occupied and enjoyed until his debt and damages are fully paid; and, during the time he so holds them, he is called tenant by elegit.

20. *Why are estates by statute merchant, statute staple, and elegit, chattels and not freeholds?*—161, 162.

Because, though tenants by statute and elegit may hold an estate of inheritance, or for life, *ut liberum tenementum*, until their debt be paid; yet it shall go to their executors, which is inconsistent with the nature of a freehold.

21. *Why do these estates vest in the executors, and not the heir, of the tenant?*—162.

It is probably owing to this, that, being a security and remedy provided for personal debts due to the deceased, to which debts the executor is entitled, the law has, therefore, thus directed their succession; as judging it reasonable, from a principle of natural equity, that the security and remedy should be vested in those to whom the debts, if recovered, would belong.

CHAPTER XI.

OF ESTATES IN POSSESSION, REMAINDER, AND REVERSION.

1. *What may estates be with respect to the time of their enjoyment?*—163.

They may be either in possession, or in expectancy.

2. *What sorts of expectancies are there and how are they created?*—163.

Remainder and reversion. The one is created by the act of the parties; the other by act of law.

3. *What is the difference between estates executed and estates executory?*—163.

Those executed are in possession, whereby a present interest passes to and resides in the tenant; estates executory depend on some subsequent circumstance or contingency.

4. *What is an estate in remainder?*—164.

An estate in remainder may be defined to be an estate limited to take effect, and be enjoyed, after another estate is determined.

5. *When lands are granted to A for twenty years, with remainder to B and his heirs for ever, are there not two estates?*—164.

Both these interests are, in fact, but one estate; A is tenant for years, remainder to B in fee.

6. *What are the rules laid down by law, to be observed in the creation of remainders?*—165–168.

1st. There must necessarily be some particular estate, precedent to the estate in remainder.

2d. The remainder must commence, or pass out of the grantor, at the time of the creation of the particular estate.

3d. The remainder must vest in the grantee during the continuance of the particular estate, or *eo instanti* that it determines.

7. *What is the particular estate?*—165.

The precedent estate is called the particular estate, as being only a small part, or *particula*, of the inheritance.

8. *Why cannot an estate of freehold be created to commence* in futuro?—166.

Because, at common law, no freehold in lands could pass without livery of seizin, which must operate either immediately, or not at all.

9. *Is a remainder an estate commencing* in præsenti *or* in futuro?—166.

It is, to all intents and purposes, an estate commencing *in præsenti*, though to be occupied and enjoyed *in futuro*.